

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 09-03B**

**Z.C. Case No. 09-03B**

**Skyland Holdings, LLC**

**(Two-Year PUD and Zoning Map Amendment Time Extension @ Squares 5632, 5633,  
5641, 5641N and Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187,  
214/189, 214/190, and 214/196)**

**December 9, 2013**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on December 9, 2013. At that meeting, the Commission approved the request of Skyland Holdings, LLC ("Applicant") for a two-year time extension of an approved consolidated planned unit development ("PUD") and related Zoning Map amendment. At the same time, the Commission approved Z.C. Case No. 09-03A, in which the Applicant requested a modification to the approved PUD. The order granting the modification (Z.C. Order No. 09-03A) was issued concurrently with this Order, consistent with the Commission's intent that this approved extension applies to the PUD as modified. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

**FINDINGS OF FACT**

- 1 The Commission granted approval of the consolidated PUD and Zoning Map amendment on July 12, 2010 pursuant to Z.C. Order No. 09-03 that became effective on September 10, 2010. The approval was valid for a period of three years from the effective date of the order, within which time an application for a building permit for construction of a building on Blocks 1, 2, 3, or 4 was required to be filed (Z.C. Order No. 09-03.) Applications for building permits for all remaining portions of the project had to be filed no later than 10 years after the effective date of Z.C. Order No. 09-03 and construction had to start no later than 11 years after the effective date of Z.C. Order No. 09-03.
- 2 On November 8, 2012, the Applicant filed a request to modify the approved PUD in Case No. 09-03A.
- 3 On November 9, 2012, the Applicant filed a request to extend the time for filing the first building permit for two years until September 10, 2015. The Applicant also requested that the Commission consider this extension request along with the modification request in Z.C. Case No. 09-03A (Exhibits ["Ex "] 1, 5.)

4. The extension request was placed on the Commission's meeting agenda for December 10, 2012, at which time, the Commission voted to defer action on the extension request pending the outcome of the modification request in Z.C. Case No 09-03A. (12/10/12 Transcript ["Tr." at p 61 )
5. Z C Order No 09-03 approved a town center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses The PUD includes approximately 311,000 square feet of retail and service-related uses and approximately 450-500 residential units. Z.C Order No. 09-03 also approved the rezoning of the Property to the C-3-A Zone District
- 6 As noted, the PUD approval was modified by Z C Case No 09-03A Z.C Order No. 09-03A approved changes to the number of parking spaces, improvements to the site circulation, reconfigurations to residential buildings, changes to architectural details of the free-standing large-format retail building (Block 1), and other modifications
7. Since approval of the original PUD, the Applicant has made a good faith effort to proceed with the PUD Since the Commission's approval of Z.C. Case No. 09-03, the Applicant has proceeded with construction drawings, held pre-development review meetings, and identified the anchor retail tenant In addition, the District has begun razing some vacant buildings on the Property (Ex 1 )
- 8 At the time the Applicant filed this request, November 9, 2012, the District of Columbia (who owns the property) was still engaged in litigation with some of the previous owners of the property regarding the financial value of those properties. This continued litigation made it difficult for the Applicant to move forward with the acquisition of the property and to obtain the necessary financing for the significant pre-construction activities (Ex 1)
9. The Applicant demonstrated that there is no change to the material facts on which the original PUD was approved. (Ex 1 )
- 10 The Applicant served its request for an extension on all parties to the PUD, including Advisory Neighborhood Commissions ("ANC") 7B and 8B and the Ft. Baker Drive Party The parties were given 30 days to respond to the request (Ex 1.)
- 11 Neither ANC 7B nor ANC 8B submitted a letter into the record to indicate their support or opposition
- 12 The Ft. Baker Drive Party did not submit anything into the record

- 13 The Office of Planning (“OP”) submitted a report on December 6, 2013. OP evaluated the Applicant’s request and determined that the request fulfilled the standards promulgated in § 2408.10 of the Zoning Regulations. OP noted that there was not any change to the material facts on which the original PUD was approved and that there are not any projects anticipated in the immediate neighborhood that would affect the development plans for the property. OP also noted the pending litigation as an impediment to the Applicant’s ability to proceed with the PUD as the good cause justification under § 2408 11. (Ex. 8.)

### **CONCLUSIONS OF LAW**

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10 and 2408.11 are satisfied. Section 2408.10 gives the Commission the authority to extend the validity of a PUD approval.

The Commission has analyzed such extension requests pursuant to the standard set forth for PUD time extensions in § 2408.10. Section 2408 10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the parties to the original PUD application when it filed this time extension request on November 9, 2012. All parties were given 30 days to respond to the extension request, and none of them responded.

Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. Based on the Applicant’s and OP’s analysis, the Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408 10(c) requires that the Applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408 11. Pursuant to § 2408 11, an extension of validity of a PUD may be granted if the Applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an Applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the Applicant’s reasonable control,

- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the Applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

Based on the ongoing litigation regarding the value of the Property, the Commission finds that there is good cause shown to extend the period of time of the validity of the approved PUD and Zoning Map amendment. The Commission also finds that the Applicant has made good faith efforts to effectuate the PUD and has pursued a significant number of steps to proceed with the construction of the PUD while events beyond the Applicant's control persisted.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in Paragraph 13 above). OP's analysis demonstrates that the Applicant has satisfied the criteria for a time extension of the Order.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.10 and 2408.11.

### **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03B for a two-year time extension of Z.C. Order No. 09-03. The validity of the PUD as modified by Z.C. Order 09-03A is extended until September 10, 2015, by which time the Applicant must file for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction of that building must start by September 10, 2016 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No. 09-03A, sets forth the Applicant's remaining obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so.

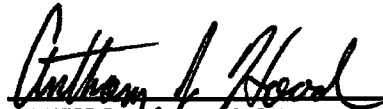
For the reasons stated above, the Commission concludes that the Applicant has met its burden, it is hereby **ORDERED** that the request be **GRANTED**.

On December 9, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote

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of **5-0-0** (Anthony J Hood, Marcie I Cohen, Robert E Miller, Peter G May, and Michael G Turnbull to adopt)

In accordance with the provisions of 11 DCMR 3028 8, this Order shall become final and effective upon publication in the *D C Register* on January 17, 2014

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**